

2013 IL App (1st) 110587-U

FOURTH DIVISION  
January 17, 2013

No. 1-11-0587

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 05962
	)	
WILLIAM EVANS,	)	Honorable
	)	William J. Kunkle,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE EPSTEIN delivered the judgment of the court.  
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

**ORDER**

¶ 1 *Held:* Strict compliance with Supreme Court Rule 604(d) does not require the trial court to provide defendant with the entire trial court file when he proceeds *pro se* on his motion to withdraw his guilty plea; judgment affirmed.

¶ 2 Defendant William Evans entered a negotiated plea of guilty to armed habitual criminal and was sentenced to six years' imprisonment.<sup>1</sup> On appeal, defendant maintains that the trial

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<sup>1</sup>The sentence in this case was ordered to run consecutive to a four-year term of imprisonment imposed in a separate case in which defendant also pleaded guilty.

court violated Supreme Court Rule 604(d) (eff. July 1, 2006) by failing to allow him to examine the trial court file in preparing, *pro se*, for the hearing on his motion to withdraw his guilty plea.

¶ 3 The record shows that defendant was charged with 10 offenses, including, *inter alia*, armed habitual criminal for possession of a firearm on February 26, 2007, after having been convicted of manufacture/delivery of a controlled substance and unlawful use of a weapon by a felon in two separate cases. While these charges were pending, defendant filed numerous *pro se* motions, including motions to proceed *pro se*, or, in the alternative, appointment of new counsel. Defendant was allowed to proceed *pro se* in January 2008, and when counsel was reappointed to represent him in February 2008, defendant adamantly opposed the reappointment, and continued to file *pro se* motions in the trial court, including motions to proceed *pro se*.

¶ 4 In July 2009, following a behavioral clinical examination, defendant was again allowed to represent himself, but counsel was later reappointed on October 8, 2009. Defendant subsequently filed a request in this court to file a late notice of appeal from the reappointment order which this court denied. *People v. Evans*, No. 1-09-3480 (2010) (dispositional order). Defendant then continued to file *pro se* motions in the trial court, including motions to compel disclosure of allegedly exculpatory evidence or dismissal and for substitution of judge, which were all denied.

¶ 5 When the plea proceeding commenced on May 10, 2010, defendant again indicated that he wanted to proceed *pro se*. The matter was passed, and when it was recalled, defendant indicated that he was being represented by counsel. He subsequently entered a negotiated plea of guilty to armed habitual criminal after the court admonished him in accordance with Supreme Court Rule 402 (eff. July 1, 1997), and he indicated his understanding of the admonishments, and the State presented a factual basis to which he stipulated. The trial court then found defendant

guilty of armed habitual criminal and sentenced him to the agreed term of six years' imprisonment.

¶ 6 On June 1, 2010, defendant filed a *pro se* motion to withdraw his guilty plea alleging that the State failed to disclose exculpatory electronic video surveillance. Defendant further alleged that police withheld and then destroyed electronic video surveillance recordings from its pod video cameras, and failed to insure and guarantee that all relevant information was preserved and provided so that discovery could be completed. He also claimed that the trial court denied him the right to self-representation, and requested access to all the recorded proceedings from the *pro se* pretrial motions for substitution of judge and to compel disclosure or dismissal, including all documents and exhibits attached to those motions.

¶ 7 On September 30, 2010, defendant filed a *pro se* motion for a hearing on his motion to withdraw his guilty plea; and, on November 15, 2010, he filed a *pro se* motion to proceed *pro se*, and to receive and review the entire record. In this motion, defendant also alleged that he received ineffective assistance of counsel.

¶ 8 On November 22, 2010, the trial court denied defendant's request for the entire record, noting that he did not need the entire record to vacate his guilty plea. The court further noted that defendant could receive the transcript from the plea proceeding and sentencing, and that it would allow him to proceed *pro se* on his motion to withdraw the guilty plea. Defendant, acting *pro se*, repeated his request for copies of his pretrial *pro se* motions to withdraw, substitution of judge, and to compel disclosure or dismissal which he claimed had exhibits attached to them in which police admitted to destroying exculpatory evidence. The court again denied defendant's request noting that these motions had no bearing on his motion to withdraw the guilty plea.

¶ 9 On January 7, 2011, a hearing was held on defendant's motion to withdraw his guilty plea where the State argued that defendant's allegations did not form a basis for withdrawing a guilty

plea but, rather, were more appropriate for post-conviction proceedings. The court subsequently denied the motion observing that the record showed that defendant pleaded guilty after receiving full and complete admonishments from the court which he indicated that he understood.

¶ 10 On January 19, 2011, defendant filed a *pro se* notice of appeal from the order entered on January 7, 2011, denying his motion to withdraw his guilty plea. He later amended the notice of appeal, and was subsequently appointed counsel who filed a substitute notice.

¶ 11 In this court, defendant maintains that the trial court violated Rule 604(d) by failing to provide him with the trial court file for his examination when he was proceeding *pro se*. He claims that the court's failure to strictly comply with the rule in this respect requires this court to reverse the denial of his motion to withdraw his guilty plea and remand the cause so that he may file a new motion to withdraw and have a new hearing on that motion.

¶ 12 We initially observe that defendant has not presented any substantive challenge to the plea itself. By failing to do so, defendant has waived any such challenge on review. *People v. Johnson*, 385 Ill. App. 3d 585, 608 (2008).

¶ 13 That said, we observe that the interpretation of a supreme court rule is a question of law that we review *de novo*. *People v. Drum*, 194 Ill. 2d 485, 488 (2000). In construing a supreme court rule, the primary objective is to give effect to the drafters' intent, the surest and most reliable indicator of which is the language of the rule itself, given its plain and ordinary meaning. *People v. Dominguez*, 2012 IL 111336, ¶16. Where the language of the rule is clear and unambiguous, we must apply it as written without resort to extrinsic aids of statutory construction. *Dominguez*, ¶16.

¶ 14 Rule 604(d) provides, in relevant part, that no appeal can be taken following a guilty plea unless, within 30 days of the date sentence is imposed, defendant files a motion to reconsider sentence, if only the sentence is being challenged, or if the plea is being challenged, a motion to

withdraw the plea of guilty. The rule also provides that the motion must be in writing and state the grounds therefor, and that the trial court shall determine whether defendant is represented by counsel, and if he is indigent and desires counsel, the court shall appoint counsel. Ill. S. Ct. R. 604(d) (eff. July 1, 2006).

¶ 15 Rule 604(d) further provides that:

"If the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. *The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by mail or in person to ascertain defendant's contentions of error in the sentence or the entry of the plea of guilty, has examined the trial court file and report of proceedings of the plea of guilty, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.*" (Emphasis added.)

¶ 16 The purpose of Rule 604(d) is to ensure that before a criminal appeal can be taken from a guilty plea, the trial judge who accepted the plea and imposed sentence be given the opportunity to hear the allegations of improprieties that took place outside the official proceeding and *dehors* the record, but nevertheless were unwittingly given sanction in the courtroom. *People v. Wilk*, 124 Ill. 2d 93, 104 (1988). Once defendant files a timely motion indicating his desire to challenge his guilty plea, the court must determine his status and wishes regarding counsel, and, as pertinent to this appeal, furnish a copy of the transcript to an indigent defendant without cost. In this case, the court provided defendant a copy of the transcript of the plea proceeding, thus complying with the requirement of Rule 604(d) in that regard.

¶ 17 The succeeding provisions of the rule are directed to defendant's post-plea counsel, outlining the requirements for proper representation. *In re Omar A.*, 335 Ill. App. 3d 732, 733 (2002). The purpose of the certificate requirement is to affirmatively show that counsel has reviewed defendant's claim and considered all relevant bases for the motion to withdraw the guilty plea or motion to reconsider sentence and encourages the preservation of a clear record of the reasons why a defendant is moving to withdraw his plea or to reduce sentence. *People v. Petty*, 366 Ill. App. 3d 1170, 1176 (2006). The rule's purpose of assuring that the attorney has consulted with his client to ascertain his claims of error and examined the transcript and court record is absent when the defendant is acting as his own attorney. Contrary to defendant's contention, we find no provision in the rule which requires the court to furnish defendant with the entire trial court file when he represents himself (Ill. S. Ct. R. 604(d)); and defendant has provided no authority indicating otherwise.

¶ 18 In reaching this conclusion, we have examined *People v. Denson*, 243 Ill. App. 3d 55 (1993), cited by defendant in support of his claim, and find his reliance misplaced. In *Denson*, defendant, who elected to proceed *pro se*, was not provided with a copy of the plea transcript before the hearing on his motion to vacate his guilty plea. This court thus held that the trial court's failure to provide defendant with that transcript fell short of the necessary strict compliance with Rule 604(d), and required that the denial of his motion to withdraw his guilty plea be reversed and the cause remanded for further post-plea proceedings. *Denson*, 243 Ill. App. 3d at 59-62. Here, unlike *Denson*, the trial court provided defendant with a transcript of his plea proceeding before the hearing on his motion to vacate, thereby meeting the requirement set forth in Rule 604(d). *Denson* requires no more, and we, accordingly, find that *Denson* provides no support for defendant's contrary claim.

¶ 19 Moreover, and contrary to defendant's contention, our conclusion that Rule 604(d) does not require the trial court to provide defendant with the trial court file when he represents himself, does not necessarily lead to the conclusion that a defendant cannot make any amendments to a motion to withdraw the guilty plea while it is pending. The trial court may allow defendant to amend the motion to withdraw the guilty plea *pro se*. See generally *People v. Hanna*, 155 Ill. App. 3d 805, 813-14 (1987) (noting that the trial court can allow for a *pro se* defendant to amend his motion to withdraw guilty plea). Court files are public records, personally uniquely unavailable to incarcerated defendants, so the better practice here would have been to make them available, either through inspection or reproduction. In the context of this case, inspection of the court file could not impact the viability of defendant's claims of error in his attempt to withdraw his guilty plea, based as they were largely on the denial of his numerous prior *pro se* motions. Defendant created the subject motions himself, was well familiar with their content and was present when they were denied. Moreover, the denial of these motions was known to him before he entered his guilty plea, and therefore was irrelevant to his request to withdraw his plea.

¶ 20 We also observe that defendant cursorily claims, for the first time in his reply brief, that to ensure that his decision to waive counsel is knowing and intelligent, he should be admonished that, if he proceeds *pro se*, he loses the ability to examine the trial court file. Rule 604(d), as explained above, does not provide a *pro se* defendant the right to the entire court file but, rather, only the transcript from the plea proceeding; thus, defendant cannot be said to lose a right he does not have by proceeding *pro se*. Moreover, defendant cannot raise issues for the first time in his reply brief, and we, therefore, find that he has waived this claim for review. *People v. Burney*, 2011 IL App (4th) 100343, ¶78.

¶ 21 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

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¶ 22 Affirmed.